

§ 67.7

25 CFR Ch. I (4–1–07 Edition)

of the election to share in the per capita payment; and

(ii) Make a reasonable effort to furnish a copy of the application directly to the applicant or his/her guardian for completion of the election to share in the per capita payment.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in address, giving appropriate identification of the applicant. Otherwise, the mailing address as stated on the application form shall be accepted as the address of record for all purposes under the regulations in this part.

§ 67.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline date specified in § 67.4(b). Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days after the specified deadline, and application forms mailed from outside of the United States received more than 30 days after the specified deadline in the office of the Superintendent, will be rejected for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later than close of business on the deadline date specified in § 67.4(b).

(c) If the deadline date for filing application forms falls on a Saturday, Sunday, legal holiday, or other non-business day, the deadline will be the next working day thereafter.

§ 67.8 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits may be used to support claims of eligibility for enrollment. Records of the BIA may be used to establish eligibility.

§ 67.9 Action by Superintendent.

(a) The Superintendent shall notify each individual applicant or sponsor, as applicable, upon receipt of an application. The Superintendent shall consider each application and all documentation. Upon determining an individual's eligibility, the Superintendent shall notify the individual; the parent or guardian having legal custody of a minor or incompetent adult; or the sponsor, as applicable.

(1) Written notification of the Superintendent's decision shall be sent to the applicant by certified mail, for receipt by the addressee only, return receipt requested.

(2) If a decision by the Superintendent is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed," the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the period specified for changes in election and for appeals shall begin on the date the notice was remailed. A certified or registered notice returned for any reason other than "Unclaimed" need not be remailed.

(3) If an individual files an application on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person to whom the notice is applicable. Where an individual is represented by a sponsor, notification to the sponsor of eligibility or adverse action shall be considered notification to the individual.

(b) On the basis of an applicant's election with regard to whether he or she wishes to share in the per capita payment, the Superintendent's decision shall also state whether the applicant's name will be included on the per capita payment roll. If no election has been made by the applicant, parent, or legal guardian on the application form, the individual applicant's name will not be included on the per capita payment roll.

(1) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Superintendent may grant an applicant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(2) A change in the election of whether to share in the per capita payment can only be made by competent adult applicants; by the legal guardian of an incompetent adult; or, in the case of a minor, by the minor's parent or legal guardian.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant's right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual's enrollment eligibility or the inclusion or exclusion of an individual's name on the per capita payment roll is considered to have been made, and computation of the period for appeal shall begin on the earliest of the following dates:

(1) Delivery date indicated on the return receipt;

(2) Date of acknowledgment of receipt;

(3) Date of personal delivery; or

(4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§ 67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for en-

rollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62 shall be applicable to appeals filed under this part except §§ 62.10, 62.11 and 62.12.

§ 67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive, and written notice, which shall state that the decision is final and conclusive, shall be given to the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director's decision may be addressed to the person who filed the appeal. The Area Director's decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director's decision is sufficient.

(d) Written notice of the Area Director's decision on the appeal shall be sent to the applicant by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual's election with regard to whether he or she wishes to share in the per capita payment, the Area Director's decision shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in